

SENATE BILL NO. 403

INTRODUCED BY GEBHARDT, LEWIS, LASLOVICH, A. NOONAN, KLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE TIME THE PUBLIC SERVICE COMMISSION HAS TO ACT ON A PETITION FROM A UTILITY OR QUALIFYING SMALL POWER PRODUCTION FACILITY; ALLOWING ELECTRICITY FROM AN ELIGIBLE RENEWABLE RESOURCE PURCHASED BY A PUBLIC UTILITY FROM A QUALIFYING SMALL POWER PRODUCTION FACILITY TO BE USED ~~AS AN ALTERNATIVE TO MEETING THE COMMUNITY RENEWABLE ENERGY TO OFFSET~~ REQUIREMENTS OF THE RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-603, ~~69-3-604~~, AND 69-3-2004, ~~AND 69-3-2005~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-603, MCA, is amended to read:

"69-3-603. (Temporary) Required sale of electricity under rates and conditions prescribed by commission. (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within ~~420~~ 180 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination ~~shall~~ must be made according to the standards prescribed in 69-3-604. (Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)"

~~**Section 2.** Section 69-3-604, MCA, is amended to read:~~

~~**"69-3-604. (Temporary) Standards for determination of rates and conditions.** (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power~~

production facility according to the standards in subsections (2) through (5) ~~(6)~~.

~~———— (2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall must be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.~~

~~———— (3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall must be established with consideration of the availability and reliability of the electricity produced.~~

~~———— (4) The commission may set these rates by use of any of the following methods:~~

~~———— (a) the avoided cost over the term of the contract;~~

~~———— (b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or~~

~~———— (c) any other method that will promote the development of qualifying small power production facilities.~~

~~———— (5) Purchases of electricity by a utility from a qualifying small power production facility that produces electricity from an eligible renewable resource, as defined in 69-3-2003, may be used by the utility in compliance with renewable resource standards pursuant to 69-3-2004.~~

~~———— (5)(6) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards. (Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)"~~

Section 2. Section 69-3-2004, MCA, is amended to read:

"69-3-2004. Renewable resource standard -- administrative penalty -- waiver. (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) ~~In~~ EXCEPT AS PROVIDED IN SUBSECTION (5)(C)(I), IN each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) ~~As~~ EXCEPT AS PROVIDED IN SUBSECTION (5)(C)(II), AS part of their compliance with subsection (3)(a), public utilities shall:

1 ~~—— (i) purchase both the renewable energy credits and the electricity output from community renewable~~
2 ~~energy projects that total at least 50 megawatts in nameplate capacity;~~

3 ~~—— (ii) pursuant to subsection (7)(c), use the electricity output purchased from a qualifying small power~~
4 ~~production facility AS DEFINED IN 69-3-601 that produces electricity from an eligible renewable resource, as defined~~
5 ~~in 69-3-2003, IS AN ELIGIBLE RENEWABLE RESOURCE that totals at least 50 megawatts in nameplate capacity; or~~

6 ~~—— (iii) use any combination of electricity purchased pursuant to subsections (3)(b)(i) and (3)(b)(ii) totaling~~
7 ~~at least 50 megawatts in nameplate capacity.~~

8 (c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on
9 each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

10 (4) (a) ~~In EXCEPT AS PROVIDED IN SUBSECTION (5)(C)(I),~~ IN the compliance year beginning January 1, 2015,
11 and in each succeeding compliance year, each public utility and competitive electricity supplier shall procure a
12 minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

13 (b) (i) ~~As EXCEPT AS PROVIDED IN SUBSECTION (5)(C)(II), AS~~ part of their compliance with subsection (4)(a),
14 public utilities shall:

15 ~~—— (A) purchase both the renewable energy credits and the electricity output from community renewable~~
16 ~~energy projects that total at least 75 megawatts in nameplate capacity;~~

17 ~~—— (B) pursuant to subsection (7)(c), use the electricity output purchased from a qualifying small power~~
18 ~~production facility AS DEFINED IN 69-3-601 that produces electricity from an eligible renewable resource, as defined~~
19 ~~in 69-3-2003, IS AN ELIGIBLE RENEWABLE RESOURCE that totals at least 75 megawatts in nameplate capacity; or~~

20 ~~—— (C) use any combination of electricity purchased pursuant to subsections (4)(b)(i)(A) and (4)(b)(i)(B)~~
21 ~~totaling at least 75 megawatts in nameplate capacity.~~

22 (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under
23 subsection (3)(b).

24 (c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on
25 each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

26 (5) (a) In complying with the standards required under subsections (2) through (4), a public utility or
27 competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based
28 on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail
29 customers in Montana.

30 (b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after

1 accounting for any line losses.

2 (C) (I) THE STANDARDS ESTABLISHED IN SUBSECTIONS (3) AND (4) ARE REDUCED ANNUALLY BY THE AMOUNT OF
3 ENERGY DELIVERED TO A UTILITY BY A QUALIFYING SMALL POWER PRODUCTION FACILITY, AS DEFINED IN 69-3-601, THAT
4 IS ALSO AN ELIGIBLE RENEWABLE RESOURCE.

5 (II) THE STANDARDS ESTABLISHED IN SUBSECTIONS (3)(B) AND (4)(B)(I) ARE REDUCED ANNUALLY BY THE
6 QUANTITY OF NAMEPLATE CAPACITY OF A QUALIFYING SMALL POWER PRODUCTION FACILITY, AS DEFINED IN 69-3-601,
7 THAT IS ALSO AN ELIGIBLE RENEWABLE RESOURCE UNDER CONTRACT TO DELIVER ELECTRICITY TO A UTILITY.

8 (6) A public utility or competitive electricity supplier has until 3 months following the end of each
9 compliance year to purchase renewable energy credits for that compliance year.

10 (7) (a) In order to meet the standard established in subsections (2) through (4), a public utility or
11 competitive electricity supplier may only use only:

12 (i) ~~except as provided in subsection (7)(c),~~ electricity from an eligible renewable resource in which the
13 associated renewable energy credits have not been sold separately;

14 (ii) renewable energy credits created by an eligible renewable resource purchased separately from the
15 associated electricity; or

16 (iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

17 (b) A public utility or competitive electricity supplier may not resell renewable energy credits and count
18 those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the
19 standards established in subsections (2) through (4).

20 ~~—— (c) (i) If the electricity is purchased from a qualifying small power production facility AS DEFINED IN~~
21 ~~69-3-601 that produces electricity from an eligible renewable resource, as defined in 69-3-2003 IS AN ELIGIBLE~~
22 ~~RENEWABLE RESOURCE, to comply with subsection (3) or (4) of this section, a public utility may use the electricity~~
23 ~~output in which the associated renewable energy credits have been sold separately toward compliance with the~~
24 ~~requirements of this part.~~

25 ~~—— (ii) A public utility or a competitive electricity supplier may not acquire renewable energy credits from a~~
26 ~~qualifying small power production facility that produces electricity from an eligible renewable resource unless the~~
27 ~~public utility also purchases an equivalent amount of electricity from the qualifying small power production facility.~~

28 (C) IF A PUBLIC UTILITY PURCHASES BOTH THE ELECTRICITY AND RENEWABLE ENERGY CREDITS FROM A
29 QUALIFYING SMALL POWER PRODUCTION FACILITY, THE ACQUISITION MUST BE TREATED AS A COMMUNITY RENEWABLE
30 ENERGY PROJECT PURSUANT TO SUBSECTIONS (3)(B) AND (4)(B)(I).

1 ~~(c)~~(d) Renewable energy credits sold through a voluntary service such as the one provided for in
2 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
3 standards established in subsections (2) through (4).

4 (8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the
5 standards established in subsections (2) through (4).

6 (9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2)
7 through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the
8 amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent
9 compliance years. The carryforward may not be double-counted.

10 (10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier
11 is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public
12 utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10
13 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed
14 to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties
15 must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

16 (11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver
17 from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection
18 (10). The petition must demonstrate that the:

19 (a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure
20 renewable energy credits under long-term contract, but full compliance cannot be achieved either because
21 renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the
22 public utility or competitive electricity supplier; or

23 (b) integration of additional eligible renewable resources into the electrical grid will clearly and
24 demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity
25 supplier has undertaken all reasonable steps to mitigate the reliability concerns.

26 (12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions
27 of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through
28 (4).

29 (b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007,
30 of the prices, terms, or conditions in a written contract."

1
2 ~~Section 3. Section 69-3-2005, MCA, is amended to read:~~

3 ~~"69-3-2005. Procurement -- cost recovery -- reporting. (1) In Unless the contract is with a qualifying~~
4 ~~small power production facility pursuant to 69-3-604 AS DEFINED IN 69-3-601, in meeting the requirements of this~~
5 ~~part, a public utility shall:~~

6 ~~(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable~~
7 ~~energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration;~~
8 ~~and~~

9 ~~(b) consider the importance of geographically diverse rural economic development when procuring~~
10 ~~renewable energy credits.~~

11 ~~(2) A Unless the contract is with a qualifying small power production facility pursuant to 69-3-604 AS~~
12 ~~DEFINED IN 69-3-601, a public utility that intends to enter into contracts of less than 10 years in duration shall~~
13 ~~demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard~~
14 ~~established in 69-3-2004.~~

15 ~~(3) (a) Contracts Unless the contract is with a qualifying small power production facility pursuant to~~
16 ~~69-3-604, contracts CONTRACTS signed for projects located in Montana must require all contractors to give~~
17 ~~preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the~~
18 ~~work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.~~

19 ~~(b) Contracts Unless the contract is with a qualifying small power production facility pursuant to 69-3-604,~~
20 ~~contracts CONTRACTS signed for projects located in Montana must require all contractors to pay the standard~~
21 ~~prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase~~
22 ~~of the project.~~

23 ~~(4) All Unless the contract is with a qualifying small power production facility pursuant to 69-3-604 AS~~
24 ~~DEFINED IN 69-3-601, all contracts signed by a public utility to meet the requirements of this part are eligible for~~
25 ~~advanced approval under procedures established by the commission. Upon advanced approval by the~~
26 ~~commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits~~
27 ~~the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which~~
28 ~~the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably~~
29 ~~administered.~~

30 ~~(5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans~~

1 ~~to the commission in accordance with rules adopted by the commission. The plans must be submitted to the~~
2 ~~commission on or before:~~

3 ~~—— (a) January 1, 2007, for the standard required in 69-3-2004(2);~~

4 ~~—— (b) June 1, 2008, for the standard required in 69-3-2004(3);~~

5 ~~—— (c)(a) June 1, 2013, for the standard required in 69-3-2004(4); and~~

6 ~~—— (d)(b) any additional future dates as required by the commission.~~

7 ~~—— (6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be~~
8 ~~determined by the commission, demonstrating compliance with this part for each compliance year. The reports~~
9 ~~must be filed by March 1 of the year following the compliance year.~~

10 ~~—— (7) For the purpose of implementing this part, the commission has regulatory authority over competitive~~
11 ~~electricity suppliers."~~

12
13 NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured,
14 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

15
16 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

17
18 NEW SECTION. Section 5. Applicability. [This act] applies to contracts entered into and rates
19 established after [the effective date of this act].

20
21 NEW SECTION. Section 6. Termination. ~~[Sections 1, 2, and 4-3]~~ [SECTIONS 1 AND 2] terminate on the
22 effective date of the repeal of 16 U.S.C. 824a-3.

23 - END -